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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,198	07/18/2003	Carlos Duarte	50229/MEG/F314	4042
23363	7590	12/10/2004	EXAMINER	
CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			KYLE, MICHAEL J	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/622,198

Applicant(s)

DUARTE ET AL.

Examiner

Michael J Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-20 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/27/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 18-20 are objected to because these claims describe a method of placing a spa cover on the spa. These claims ultimately depend from claim 13, which discloses a method of “removing a spa cover from a top of a spa” in the preamble. It is therefore unclear how a method of removing a spa cover from a top of a spa can include method steps to cover the spa. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: How the elongated opening in one of the side plates of the sliding bracket used with the at least one hole of the mounting bracket. It is unclear, from the claimed elements, how the opening is coupled with another hole. There appears to an element that provides for the coupling that is not provided for in the claim. In other words, it is unclear how two openings, or holes, can be coupled to each other without additional elements.

Claim Rejections - 35 USC § 102

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 6, 7, 13, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Fettes (U.S. Patent No. 6,000,071). With respect to claims 1, 2, 4, 6, and 7, Fettes discloses a hinge assembly for a spa cover comprising a mounting bracket (60) installed near a top of a spa, a slide bracket (80) and a support arm (70) pivotably coupled (at 88) to the slide bracket. The slide bracket (80) has two ends, where the end near the pivot point (88) is moved in an upward direction as the slide bracket is slidably extended from the mounting bracket. Additionally, the mounting bracket comprises two side plates (62, 64) connected via a web (web between 60A and 60B, shown in figure 2), and one of the side plates (62) has a hole (74) used to slidably couple the slide bracket (80) to the mounting bracket. Examiner asserts that the connection at 74 allows for the other end (80B, in figure 3) of the slide bracket to slide in the mounting bracket. The hinge assembly is mounted on a spa (10) and a foldable spa cover (16).

6. With respect to claims 13 and 18, Fettes discloses a method where the spa cover (16) is removed from the spa (10) by sliding the spa cover towards a rear end of the spa (occurs as 80 slide in 60), folding the spa cover into two substantially equal sections (see figure 1), and rotating the spa cover (16, see figure 4). Additionally, the spa cover (16) is rotated so as to cover the spa about half way (when replacing the cover on the spa).

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7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes in view of Duarte et al ("Duarte", U.S. Patent No. 6,442,799). Fettes fails to disclose the support arm to be attached to the spa cover by a metal plate disposed on the outside of the spa cover.

9. Duarte teaches a spa cover hinge assembly that includes a support arm (50) that is attached to a spa cover (130) by a metal plate on the outside of the spa cover (see figure 8). This arrangement significantly reduces the amount of material, and thus manufacturing costs, required to fasten the support arm the spa cover. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Fettes as taught by Duarte in order to reduce the amount of material, and thus manufacturing costs, to attached the support arm to the spa cover.

10. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes in view of Duarte as applied to claim 9 above, and further in view of Reiker (U.S. Patent No. 6,423,899). Neither Fettes nor Duarte discloses the metal plate to be affixed to the spa cover by double-sided tape.

11. Reiker teaches a metal plate (24) that is secured to a support by double-sided tape (140). Reiker secures the plate with double sided tape so that the plate may be at least temporarily located on the support (column 3, lines 31-36). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Fettes and Duarte as taught by

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Reiker to at least temporarily secure the metal plate to the spa cover. This would allow for adjustment of the location of the metal plate prior to fastening the plate on the spa cover with screws.

12. With respect to claim 11, Duarte teaches the plate to have a hole formed therein that receives a screw, such that the screw is anchored in the spa cover by rotating the screw.

13. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes in view of Duarte and Reiker as applied to claim 11 above, and further in view of Ito (U.S. Patent No. 6,139,236). None of Fettes, Duarte, or Reiker discloses a deformable anchor engaged with screw.

14. Ito teaches fastening arrangement where a screw (15) is engaged with a deformable anchor (10), wherein the anchor is deformed and embedded inside a board as the screw is rotated. The anchor of Ito permits objects to be fastened a wall of fragile material. The board (21) is analogous to the spa cover of the present invention. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Fettes, Duarte, and Reiker, as taught by Ito, so that the supporting arm may be fastened to the spa cover with damaging the spa cover.

15. Claims 14-17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes in view of Eckel (U.S. Patent No. 3,961,723). Fettes fails to disclose the rear edge of the spa cover to be lifted as the cover is slid toward the rear.

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16. Eckel teaches a cover for a receptacle where the cover (12) is slid rearward (see figure 2), and rotated (see figure 3). As the cover is slid toward the rear, the cover is lifted from the receptacle. The sliding takes place prior to the rotating of the cover. Additionally, the rear edge of the cover is moved downward as the cover is slid toward the front of the receptacle. The rotation of the cover back onto the receptacle takes place before the sliding of the cover. Eckel uses this arrangement so that user may avoid having to lift the cover at any time (column 1, lines 7-9). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the Fettes as taught by Eckel in order to provide a cover in which a user may avoid having to lift at any time. The result of such a combination would incorporate the structure that allows the sliding and rotating in Eckel, into Fettes. Fettes would still provide the spa and spa cover structure, where the spa cover is folded in substantially in half.

17. Regarding claims 16 and 17, the combination of Fettes and Eckel shows the sliding of the spa cover toward the rear of the spa takes place prior to the folding of the spa cover, and the folding of the spa cove takes place prior to the rotating of the spa cover (shown in Fettes).

Allowable Subject Matter

18. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

19. Claims 5 and 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Conclusion

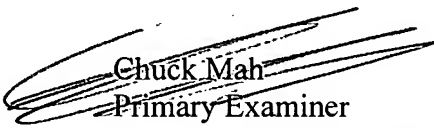
20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited to further show the state of the art with respect to spa cover hinges and other removable cover hinges: Wolters et al, Von Allmen, Cawley et al, Cross, Tiesler et al, and CH 672459 A5.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J Kyle whose telephone number is 703-305-3614. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mk


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